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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/657,679

09/08/2000

Marc A. Edlein

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28236

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02/21/2008

CRYOVAC, INC.  
SEALED AIR CORP  
P.O. BOX 464  
DUNCAN, SC 29334

EXAMINER

MIGGINS, MICHAEL C

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/657,679	<b>Applicant(s)</b> EDLEIN ET AL.	
	<b>Examiner</b> Michael C. Miggs	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27-32, 37-38, 41-46, 48-51, 54-55, 70-73, 78-80, 83-85, 90-92, 97-104 and 110 is/are allowed.
- 6) ☒ Claim(s) 1-7, 12, 13, 16-26, 52, 53, 56-68 and 107 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims pending in the application are 1-7,12,13,16-32,37,38,41-46,48-63,65-68,70-73,78-80,83-85,90-92,97-104,107 and 110.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/13/08 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 25-26, 52-53 and 56-68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 25-26, 52-53 and 56-68 are in improper independent or dependent claim form. It is not clear to one of ordinary skill in the art whether claims 25-26, 52-53 and 56-68 are independent or dependent claims.

If claims 25-26, 52-53 and 56-68 are independent claims they are improper because the claims include limitations from another claim that are not specifically recited in the claim. For example claim 25 recites "the film of claim 1", claim 25 does

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not recite each and every limitation from claim 1 in claim 25 and thus claim 25 is not in proper independent claim format.

If claims 25-26, 52-53 and 56-68 are dependent claims than they lack antecedent basis in the base claim because none of the base claims recite either a packaged food product or a method of packaging.

Appropriate correction is required.

### **Withdrawn Rejections**

4. All previous rejections of record have been withdrawn in favor of the new rejections and comments below.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-7, 12-13, 16-26 and 56-61, 107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patrick et al. (US 6060136) in view of Lovin et al. (US 5407708).

Patrick discloses a food packaging (column 4, lines 35-62) comprising an antifog film and a printed image on the antifog film, the image comprising an ink (column 2, lines 5-19, column 12, lines 15-56 and column 13, lines 31-46 especially since the entire

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film is treated with radiation thus causing cross-linking). Patrick also discloses the film having a roll form (column 13, lines 19-31).

Patrick fails to teach a printed electron-beam cured ink.

Lovin teaches a printed electron-beam cured ink for food packaging (column 4, lines 24-68) in order to avoid the disadvantages known with solvent base inks such as solvent evaporation (column 1, lines 31-48).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a printed electron-beam cured ink in the packaging of Patrick in order avoid the disadvantages known with solvent base inks such as solvent evaporation as taught or suggested by Lovin.

### ***Allowable Subject Matter***

7. Claims 27-32, 37-38, 41-46, 48-51, 54-55, 70-73, 78-80, 83-85, 90-92, 97-104 and 110 are allowed because of applicant's showing of an unexpected result for an electron-beam cured overprint varnish on an anti-fog film.

### **Answers to Applicant's Arguments**

8. Applicant's arguments and declaration of 2/13/08 have been carefully considered. Applicant's showing of an unexpected result for an electron-beam cured overprint varnish on an anti-fog film are found persuasive since the anti-fog properties of the film with the electron-beam cured overprint varnish is superior when compared to the same films without the electron-beam cured overprint varnish. Therefore, claims 27-

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32, 37-38, 41-46, 48-51, 54-55, 70-73, 78-80, 83-85, 90-92, 97-104 and 110 containing an electron-beam cured overprint varnish on an anti-fog film have been indicated as allowed. However, applicant's declaration for an electron-beam cured ink on a substrate are not commensurate in scope with the claims, namely claim 1, since the declaration does not show a comparison between an electron-beam cured ink on *an anti-fog film* and a non-electron-beam cured ink on *an anti-fog film*. All of applicant's examples from table 2 show various inks over a substrate and not an anti-fog film. Furthermore, applicants declaration is not persuasive for an electron-beam cured ink on a substrate are not commensurate in scope with the claims, namely claim 1, since applicant admits on page 5 of the declaration that the results of table 2 may be unreliable for drawing conclusions as to the performance of the present invention.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael C. Miggins/  
Primary Examiner, Art Unit 1794

MCM  
February 18, 2008